



* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No. 1136 of 2006**

Judgment reserved on: May 7, 2007

% Judgment delivered on: May 11, 2007

The Commissioner of Income Tax, Delhi (Central)-I
ARA Centre, Jhandewala Extension
New Delhi

...Appellant

Through Mr. R.D. Jolly with Ms. Sonia Mathur,
Advocates

Versus

M/s Sahara India Financial Corporation Limited
1, Kapoorthala Complex
Aliganj, Lucknow

...Respondent

Through Mr. Perci Pardiwala with Mr. Aarohi
Bhalla, Advocates

WITH

2. ITA No.1155 of 2006

The Commissioner of Income Tax, Delhi (Central)-I
ARA Centre, Jhandewala Extension
New Delhi

...Appellant

Through Mr. R.D. Jolly with Ms. Sonia Mathur,
Advocates

Versus

M/s Sahara India Financial Corporation Limited
1, Kapoorthala Complex
Aliganj, Lucknow

...Respondent

Through Mr. Perci Pardiwala with Mr. Aarohi
Bhalla, Advocates



3. ITA No.1147 of 2006

The Commissioner of Income Tax, Delhi (Central)-I
ARA Centre, Jhandewala Extension
New Delhi

...Appellant

Through Mr. R.D. Jolly with Ms. Sonia Mathur,
Advocates

Versus

M/s Sahara India Financial Corporation Limited
1, Kapoorthala Complex
Aliganj, Lucknow

...Respondent

Through Mr. Perci Pardiwala with Mr. Aarohi
Bhalla, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 22nd July, 2005 passed by the Income Tax Appellate Tribunal, Lucknow Bench A, Lucknow (for short the Tribunal) in ITA No.476/LUC/2001, C.O. No.133/LUC/2004 and ITA No.709/LUC/2002. The decision in a



fourth appeal decided by the Tribunal, being ITA No. 304/LUC/2001, is not under challenge. All these appeals pertain to the assessment year 1996-97.

2. Learned counsel for the assessee raised a preliminary objection to the effect that this Court does not have territorial jurisdiction to entertain these appeals under Section 260A of the Income Tax Act, 1961 (the Act). It was submitted that the assessment order was passed by the Assessing Officer on 23rd April, 1999 in Lucknow, an appeal against that was decided by the Commissioner of Income Tax (Appeals) in Lucknow on 27th April, 2000 and a further appeal was decided by the Tribunal in Lucknow on 26th May, 2003. It appears that an appeal under Section 260A of the Act is pending before the Lucknow Bench of the Allahabad High Court in respect of the order passed by the Tribunal.

3. In the second round of litigation (after remand of the case to the Assessing Officer), the three authorities under the Act, namely, the Assessing Officer, the Commissioner of Income Tax (Appeals) as well



as the Tribunal passed orders in Lucknow and it is against the second order passed by the Tribunal on 22nd July, 2005 that the present appeals under Section 260A of the Act have been filed in this Court.

4. According to learned counsel for the assessee, since all the proceedings and decisions had taken place in Lucknow, this Court does not have territorial jurisdiction to entertain these appeals which, he says, may be returned to the Appellant for presentation in the proper Court.

5. We are not in agreement with the submissions of learned counsel for the assessee and are of the view that we have the necessary territorial jurisdiction to entertain this and the other two connected appeals.

6. On 29th July, 2005, an order was passed by the Commissioner of Income Tax (Central), Kanpur under Section 127(2) of the Act. This section provides as follows:

“127. Power to transfer cases.

(1) xxx xxx xxx



(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner, -

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorize in this behalf.

(3) xxx xxx xxx

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation – In Section 120 and this section, the word “case”, in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date,



and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.”

7. A bare perusal of the aforesaid provision makes it broadly clear that the Director General or the Chief Commissioner or the Commissioner, as the case may be, is empowered to transfer a case from one jurisdiction to another on complying with the principles of natural justice.

8. In exercise of power conferred by Section 127(2) of the Act, a notice was issued to the assessee on 20th June, 2005 giving an opportunity of being heard in connection with the proposed transfer of the case from the Additional Commissioner of Income Tax, Central Circle-I, Lucknow to the Additional Commissioner of Income Tax, Central Circle-VI, New Delhi. The notice was issued to the assessee and also to others of the Sahara Group. The relevant portion of the notice dated 20th June, 2005 reads as follows:

“The Sahara Group consists of several companies, firms and individuals which are presently assessed to tax at various places, including at Lucknow, Delhi and Kolkata. The Group has over a period of time diversified its business activities and across cities and towns of the country. There



is, however, an inter-lacing and inter-connection of funds and of business activities amongst the various entities of the Group.

2. The Sahara Group had earlier filed an application before the Chief Commissioner of Income Tax (Central) North, New Delhi for the transfer of cases being assessed in the Central Circle, Lucknow on the ground that the administrative / control offices of most of cases of the Group has shifted of Delhi. It is a fact that presently most of the offices of the group concerns, including that of M/s. Sahara Airlines Ltd. and of Sahara India (Firm) are located in Delhi and many of the companies are also assessed to tax at New Delhi.

3. In view of the above, I am of the opinion that of coordinated investigation and assessment, the cases of the Sahara Group should be centralized in New Delhi.

4. It is, therefore, proposed to transfer your case to New Delhi and centralize the same with Asstt. Commissioner of Income Tax, Central Circle-6, New Delhi under the Addl. Commissioner of Income Tax, Central Range-1 of Commissioner of Income Tax (Central)-1, New Delhi Charge. You are hereby afforded an opportunity of being heard in the matter in terms of provisions of section 127 (2) of the Income Tax Act, 1961 and for this purpose authorized representative on 6th July at 11.00 A.M.”

9. The assessee objected to the proposed transfer but the objections were turned down by the Commissioner of Income Tax (Central), Kanpur. Without going into the reasons for rejecting the objections, the operative portion of the order dated 29th July, 2005 is



reproduced below:

“10. In view of the above, the objections raised by the assessee against the proposed transfer of its case to New Delhi are not found tenable and are accordingly rejected.

11. Accordingly, by virtue of power conferred by sub-section (2) of Section 127 of the I.T. Act and all other powers enabling me in the behalf, I, the Commissioner of Income Tax (Central), Kanpur hereby transfer of the case, the particular of which are mentioned hereunder in Col. 1 to 3 of the schedule appended below from the Assessing Officer mentioned in Col. 4 to the Assessing Officer mentioned in Col. 5 thereof: -

Schedule

Sl. No.	Name & address of the assessee	PAN/GIR No.	From Assessing Officer	To Assessing Officer
1.	2.	3.	4.	5.
1.	M/s.Sahara India Financial Corporation Ltd., Sahara India Bhawan, 1, Kapoorthala Complex, Aliganj, Lucknow	AADCS8695C	Asstt. Commissioner of Income Tax, Central Circle-1, Lucknow	Asstt. Commissioner of Income Tax, Central Circle-6, New Delhi.

This order take effect from 15.09.2005.”

10. The order dated 29th July, 2005 was challenged by the assessee before the Lucknow Bench of the Allahabad High Court but by a judgment and order dated 8th February, 2006, the Bench did not find any arbitrariness or illegality in the order of transfer and, accordingly, dismissed the writ petition filed by the assessee. The decision of the



Allahabad High Court is reported as *Sahara Airlines Ltd. & Ors. v. Director General of Income Tax (Investigation) & Ors., 2006 (202) CTR 1*. We are told that the decision of the Bench was taken up to the Supreme Court but the petition for special to appeal was dismissed. Consequently, it is quite clear that the order of transfer under Section 127(2) of the Act has now attained finality and cannot be reopened, even collaterally.

11. Learned counsel for the assessee contended that since the assessment orders had already been passed in respect of the assessee and a decision had also been taken by the Tribunal, there was no question of transferring the jurisdiction in respect of the assessee from one place to another. We are of the view that this argument is completely misplaced. The Explanation to Section 127(4) of the Act tells us what the word “case” means in relation to any person whose name is specified in any order or direction issued under Section 127 of the Act. The Explanation says that “case” means all proceedings under the Act in respect of any year:

(i) which may be pending on the date of the order or direction;



- (ii) which may have been completed on or before the date of the order or direction;
- (iii) including all proceedings which may be commenced after the date of the order or direction in respect of any year.

12. In other words, the Explanation to Section 127(4) of the Act talks of proceedings, past, present and future in respect of a person whose name is specified in the order or direction passed under Section 127 of the Act and this would apply to any previous year.

13. The order passed under Section 127(2) of the Act clearly relates to the “case” of the assessee mentioned in the Schedule, and by virtue of the Explanation, all future proceedings that may be taken under the Act (obviously including an appeal under Section 260A thereof) would now have to be in harmony with the order passed under Section 127(2) of the Act. Consequently, the jurisdiction in respect of the “case” and the assessee having been shifted from Lucknow to Delhi, the Revenue could file the appeal under Section 260A of the Act only in Delhi and it could not have filed an appeal in the Lucknow Bench of the



Allahabad High Court.

14. Learned counsel for the assessee relied upon two decisions of this Court to contend that the situs of the Assessing Officer is what determines the jurisdiction of the High Court in respect of entertaining an appeal under Section 260A of the Act. In support of his argument, learned counsel relied upon *Suresh Desai & Associates v. Commissioner of Income-tax, (1998) 230 ITR 912* and *Commissioner of Income-tax v. Digvijay Chemicals Ltd., (2006) 204 CTR 234*.

15. We have gone through both these decisions with the assistance of learned counsel for the parties and while the accepted general principle is that the situs of the Assessing Officer is what determines the High Court having jurisdiction over the case, none of these decisions deal with one important aspect of the case (because it did not arise), namely, what would happen when the situs of the Assessing Officer is changed by an order passed under Section 127 of the Act, as has happened in the present case. One important fact in both the above decisions was that even though there was a transfer of



jurisdiction from one place to another, the proceedings in respect of the relevant previous year had not been transferred from one jurisdiction to another.

16. In *Suresh Desai*, the relevant assessment year was 1980-81 and as mentioned in the decision, the assessment records of the petitioner were ordered to be transferred from Bombay to Delhi but the transfer did not pertain to the assessment year 1980-81. Similarly, in *Digvijay Chemicals*, the relevant assessment year was 1993-94 but the assessment records that were transferred to Delhi were those pertaining to the assessment years 1988-89, 2000-01 and 2001-02. It is for this reason that the effect of the transfer of jurisdiction under Section 127 of the Act was not discussed either in *Suresh Desai* or in *Digvijay Chemicals* because that question, on the facts of the case, did not arise for consideration. Learned counsel for the assessee, therefore, cannot draw any assistance from any of the two decisions cited by him.

17. On the other hand, the effect of the transfer of jurisdiction from Lucknow to Delhi specifically arises in the present case and we are



of the view that the jurisdiction in respect of the assessee having been transferred to Delhi lock, stock and barrel and all the records of the assessee also having been transferred from Lucknow to Delhi, it is only the High Court in Delhi that can entertain an appeal under Section 260A of the Act directed against the order passed by the Tribunal on 22nd July, 2005. Our conclusion follows from a plain reading of the Explanation to Section 127(4) of the Act as well as from the effect of the order dated 29th July, 2005 passed by the Commissioner of Income Tax (Central), Kanpur under Section 127(2) of the Act. Consequently, with effect from 29th September, 2005 (the date from which the order passed under Section 127(2) of the Act is enforced) the jurisdiction in respect of the assessee for future proceedings under Section 260A of the Act is with the Delhi High Court. Admittedly, the present appeals have been filed after 29th September, 2005 and so they would be maintainable in this Court and no other High Court.

18. Under the circumstances, we reject the contention of learned counsel for the assessee.



19. In so far as the merits of the case are concerned, the Revenue has raised several issues and we are of the view that except one issue which is based on facts, the other issues raise substantial questions of law.

20. The issue that does not raise any substantial question of law pertains to the disallowance made by the Assessing Officer under Section 43B of the Act of Rs.7,38,563/-. The Tribunal has noted in paragraph 67 of its order that the Commissioner of Income Tax (Appeals) had verified the date of the challans and other documents before deleting the addition made by the Assessing Officer. Since this conclusion is based on a finding of fact, no substantial question of law arises.

21. In respect of the other issues, we admit this appeal and frame the following questions of law:

1. Whether, on a correct interpretation of Section 68 of the Income Tax Act, 1961 the Income Tax Appellate Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition of Rs.8,55,25,37,618/- made by the Assessing Officer?



2. If the answer to Question No.1 is in the negative, whether the Income Tax Appellate Tribunal was correct in law in deleting the disallowance of Rs.50,12,45,795/- made by the Assessing Officer on account of interest on deposits?
3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the addition of Rs.53,86,65,000/- made under Section 68 of the Income Tax Act, 1961 on account of unexplained cash credits in the nature of share capital, share premium and share application money?
4. Whether the Income Tax Appellate Tribunal was correct in law in deleting the addition of Rs.28,59,490/- made on account of expenses pertaining to earlier years by accepting the claim of the Assessee of reversal of excess transfer fee credited in earlier years?
5. Whether the Income Tax Appellate Tribunal was right in deleting the disallowance of Rs.5,01,750/- out of telecasting fee being commission paid?
6. Whether the Income Tax Appellate Tribunal was right in holding that the Assessing Officer did not “follow the guidelines” given by the Commissioner of Income Tax (Appeals) in his order dated 13th March, 2001?
7. Whether the Income Tax Appellate Tribunal was right in declining the prayer of the Revenue to remand the matter to the file of the Assessing Officer?
8. Whether the Income Tax Appellate Tribunal was right in law in upholding the direction of the Commissioner of Income Tax (Appeals) directing the Assessing Officer to treat the assessment order as under Section 143(3) of the Income Tax Act, 1961 instead of one under Section 144 of the Act?



9. Whether the Income Tax Appellate Tribunal was justified in law in disposing of the appeal of the Revenue (ITA No.476/Luc/2001) as infructuous in view of the order dated 26th May, 2003 passed by the Tribunal in ITA No.747/Alld/2000?

10. Whether the order dated 22nd July, 2005 passed by the Income Tax Appellate Tribunal is perverse in law?

22. Since the three appeals before us, namely, ITA No.1136/2006, ITA No.1155/2006 and ITA No.1147/2006 arise out of the same order, and, as mentioned by the Tribunal, they involve common grounds and were heard together and were disposed of together by a composite order, the questions framed above also relate to all three appeals, mutatis mutandis.

23. Paper books be filed in accordance with the High Court Rules. Only one set of paper books may be filed for all the three appeals.

Madan B. Lokur, J

May 11, 2007
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V.B. Gupta, J